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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JINNI TECH, LTD., et al.,

11 Plaintiffs,

12 v.

13 RED.COM, INC., et al.,

14 Defendants.

CASE NO. C17-0217JLR

ORDER DENYING MOTION TO  
LIFT THE STAY

15 **I. INTRODUCTION**

16 Before the court is Defendants RED.com, Inc. and RED.com, LLC's (collectively,  
17 "Defendants" or "RED") motion to lift the stay in this case. (Mot. (Dkt. # 61).) Plaintiffs  
18 Jinni Tech, Ltd. ("Jinni Tech") and Bruce Royce (collectively, "Plaintiffs") oppose the  
19 motion (Resp. (Dkt. # 63)), and Defendants filed a reply (Reply (Dkt. # 64)). The court  
20 has considered the parties' submissions concerning the motion, the relevant portions of

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1 the record, and the applicable law. Being fully advised,<sup>1</sup> the court DENIES Defendants'  
2 motion to lift the stay.

## 3 II. BACKGROUND AND ANALYSIS

4 The court has detailed this case's factual and procedural background in its prior  
5 orders. (*See* 10/20/17 Order (Dkt. # 32) at 2-8; 10/26/18 Order (Dkt. # 59) at 2-7.) Thus,  
6 in this order, the court recounts only the facts and procedural history salient to the instant  
7 motion.

8 This case involves competing filmmaking products manufactured and sold by the  
9 parties. (*See* FAC (Dkt. # 10) ¶¶ 3-6; Answer (Dkt. # 33) ¶ 3.) Plaintiffs claim that, after  
10 Jinni Tech introduced a filmmaking product—the JinniMag—RED made or encouraged a  
11 series of allegedly false statements about Jinni Tech. (*See generally* FAC.) Plaintiffs  
12 filed suit on February 10, 2017, asserting that Defendants falsely advertised RED's  
13 products and engaged in unfair competition, in violation of the Lanham Act, 15 U.S.C.  
14 § 1125(a). (*See* Compl. (Dkt. # 1) ¶¶ 90-108; FAC ¶¶ 107-25.) Plaintiffs also assert  
15 various violations of Washington law, including product disparagement and trade libel,  
16 tortious interference, intentional and negligent infliction of emotional distress,  
17 defamation, false light, and violations of the Washington Consumer Protection Act.  
18 (FAC ¶¶ 126-82.) A month after Plaintiffs filed suit, on March 2, 2017, RED.com, Inc.  
19 brought an action against Jinni Tech and Mr. Royce in the Central District of California,  
20 alleging patent infringement, trademark infringement, and other violations of federal and

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22 <sup>1</sup> Plaintiffs request oral argument on the motion (*see* Resp. at 1), but the court finds oral  
argument unnecessary to its disposition of the motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 state law. *See generally Red.com, Inc. v. Jinni Tech, Ltd.*, No. 8:17-cv-00382-CJC-KES,  
2 Dkt. # 1 (“Compl.”) (C.D. Cal.) (hereinafter, “the California case”). The California case  
3 is scheduled for trial on May 7, 2019. (*See* 10/26/18 Order at 6.) This case was  
4 scheduled for trial on August 19, 2019. (*See id.*; *see also* Sched. Order (Dkt. # 24) at 1.)

5 After various motions by the parties in both courts (*see* 10/26/18 Order at 4-5),  
6 Plaintiffs brought a motion to stay this action pending resolution of the California case  
7 (*see generally id.*; *see also* MTS (Dkt. # 49)). In opposing the stay, RED argued, in part,  
8 that a stay would damage its ability to conduct timely and complete discovery, including  
9 taking Mr. Royce’s deposition, preventing it from finalizing its summary judgment  
10 motion and resolving this case. (MTS Resp. (Dkt. # 54) at 9-10.) After considering the  
11 parties’ arguments and the three relevant factors for a stay, the court determined that a  
12 stay was appropriate. (*See* 10/26/18 Order at 8-16.) The court explained the parameters  
13 of the stay as follows:

14 [E]xcept for matters related to discovery, the court stays this case until the  
15 proceedings before the Central District of California are complete. During  
16 this stay, however, the parties must continue conducting discovery according  
17 to the current scheduling order. (*See generally* Sched. Order.) The discovery  
18 cutoff date of March 8, 2019, remains in effect, as does the deadline for filing  
19 motions related to discovery. (*See id.* at 2.) . . . This stay will permit the  
20 court to conserve resources and benefit from the California case’s disposition  
21 of the patent claims. This limited stay, which addresses Defendants’  
22 concerns about completing discovery, will work minimal hardship, if any, on  
the parties, and will guard against the risk of inconsistent rulings.

Within fourteen (14) days of completion of the proceedings before the  
Central District of California, the parties shall file a joint status report, briefly  
outlining the resolution of the California case and proposing a new case  
schedule. In addition, should circumstances otherwise change such that  
lifting the stay is warranted, either party may move to lift the stay. Once the

1 stay is lifted, the court will enter a new scheduling order as soon as  
2 practicable.

3 (*Id.* at 15-16.) The court concluded that, in light of the parameters of the stay, which  
4 allowed discovery to proceed and only minimally extended the case, RED would “suffer  
5 minimal harm, if any.” (*Id.* at 9-11.) In addition, the court determined that the  
6 “significant overlap” between this case and the California case, and the potential for  
7 inconsistent rulings, favored a stay. (*Id.* at 11-13.)

8 In its present motion to lift the stay, RED argues that “circumstances have changed  
9 such that” the court should lift the stay and hear Defendants’ motion for summary  
10 judgment. (Mot. at 3.) RED focuses its motion on the third stay factor: whether the stay  
11 contributes to “the orderly course of justice measured in terms of the simplifying or  
12 complicating of issues, proof, and questions of law which could be expected to result  
13 from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); (Mot. at 4-8.) RED  
14 claims that this factor “favor[s] lifting the stay for the limited purpose of hearing RED’s  
15 motion for summary judgment.” (Mot. at 4.) In short, RED has now taken Mr. Royce’s  
16 deposition. (*Id.* at 2.) RED claims that Mr. Royce’s deposition “provides the factual  
17 basis for this Court to dismiss Plaintiffs’ claims” without having to wait for the California  
18 case’s outcome. (*Id.* at 2-8.) RED also points out that, due to the different legal  
19 standards in the two cases, it is possible that one party could prevail in the California case  
20 while the other party could prevail in this court without there being inconsistent rulings.  
21 (*Id.* at 6.) Therefore, according to RED, the court should not maintain the stay because it  
22 may be possible to reconcile seemingly inconsistent rulings.

1       The court finds that circumstances have not changed such that it should lift the  
2 stay. The court considered many of RED’s current arguments when deciding to stay the  
3 case in the first place. For example, the court already addressed that “the issues in the  
4 California case are not identical to the issues here.” (10/26/18 Order at 13.) To clarify,  
5 the relevant factor when considering a stay is not whether the issues in one case will be  
6 absolutely dispositive of the issues in the other case. Rather, the court considers whether  
7 a stay will contribute to “the orderly course of justice measured in terms of the  
8 simplifying or complicating of issues, proof, and questions of law which could be  
9 expected to result from a stay.” *CMAX*, 300 F.2d at 268. In weighing this factor in its  
10 prior order, the court considered that, on the one hand, the California case relates to  
11 whether Plaintiffs infringed Defendants’ rights by manufacturing and selling the  
12 JinniMag and that, on the other hand, all of Plaintiffs’ claims in the present case ask the  
13 court to consider to some extent whether patent infringement occurred. (10/26/18 Order  
14 at 12.) In addition, the court considered that some of RED’s affirmative defenses require  
15 the court to know whether Plaintiffs committed patent infringement, which is strictly the  
16 province of the California case. (*Id.*) The court therefore concluded that, although the  
17 cases are not identical, “there is a significant overlap of the issues” between the cases  
18 such that “resolution of the California case will help decide the factual and legal issues  
19 before the court.” (*Id.* at 12, 13.)

20       RED claims that the court does not need to wait for the California case to resolve  
21 because, based on Mr. Royce’s deposition, the court can now conclude that Defendants’  
22 alleged defamatory statements at issue in this case are “substantially true,” which is a

1 complete defense to defamation under Washington law. (Mot. at 4-6 (citing *Mohr v.*  
2 *Grant*, 108 P.3d 768, 775 (Wash. 2005)).) But this argument requires the court to wade  
3 into the question of patent infringement, which, again, is the province of the California  
4 court. Moreover, RED is incorrect that the court will not need decide whether patent  
5 infringement occurred or whether the disputed statements are non-actionable because it is  
6 undisputed that Mr. Royce admitted to as much in his deposition. (Mot. at 5, 7-8; *see*  
7 *generally* Reply.) To the contrary, the majority of Plaintiffs’ response expressly disputes  
8 RED’s characterizations of Mr. Royce’s “admissions.” (*See* Resp. at 3-10.)

9       Finally, when the court issued the stay, it understood that Mr. Royce’s deposition  
10 was imminent and that RED was eager to file a summary judgment motion. (*See*  
11 10/26/18 Order at 8-9.) Now that Mr. Royce’s deposition has occurred, RED claims that  
12 circumstances have changed such that the stay should be lifted, allowing it to move for  
13 summary judgment. This anticipated deposition is not the type of changed circumstance  
14 the court envisioned when the court qualified the parameters of its stay. (*Id.* at 16  
15 (staying this case pending resolution of the proceedings in the California case, but  
16 explaining that, “should circumstances change such that lifting a stay is warranted, either  
17 party may move to lift the stay”).)

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Dated this 1st day of March, 2019.

JAMES L. ROBERT  
United States District Judge